Architecture Image Studies AIS Scientific Journal

Vol.6, Issue 3, pp.724-734, 2025
DOI: https://doi.org/10.62754/ais.v6i3.289

https://journals.ap2.pt/index.php/ais/index

Navigating Copyright Protection for AI Works: Insights from China, Japan, and Recommendations for Vietnam

Nguyen Thi Phuong Cham[1]

Abstract

The increasing capabilities of generative artificial intelligence (GenAI) to produce outputs resembling human creations have ignited a global debate regarding the adequacy of current copyright law. To effectively navigate the complex landscape of copyright protection for AI-generated works, this paper employs a comparative legal analysis. It examines the divergent approaches adopted by China and Japan. China, notably, has become a pioneer by judicially recognizing copyright for certain AI-generated works, influenced by utilitarian principles aimed at fostering innovation, although questions of ownership between developers and users remain debated. In contrast, Japan maintains a more cautious stance, generally requiring sufficient human creative contribution and viewing AI primarily as a tool. Japanese guidance emphasizes evaluating creative intention and contribution on a case-by-case basis. Vietnam, currently adhering to a traditional copyright philosophy based on human authorship and originality rooted in natural rights theories, presently does not recognize copyright for AI-generated works, finding it challenging under existing legal provisions that exclude mere support or material providers from authorship. Drawing insights from the contrasting experiences of China and Japan, this study identifies shared challenges and potential strategies. Ultimately, the paper offers practical recommendations for Vietnamese policymakers and legal professionals on developing a suitable legal framework that clarifies criteria for human contribution and originality, potentially framing AI as a creative tool, to adapt Vietnamese copyright law to the evolving AI era.

Keywords*:* Copyright Protection, AI-Generated Works, China, Japan, Vietnam.

Introduction

Since the emergence of GenAI, significant controversy has arisen regarding copyright law (Abbott & Rothman, 2023). The question of whether to recognize copyright for works created by GenAI receives varying answers across different jurisdictions (Beconcini, 2024). Although Vietnam may be lagging in AI, it has the advantage of leveraging emerging technologies (Pham et al., 2024). The country has utilized AI in cultural, artistic, and academic fields; however, many legal issues remain unresolved (Than & Liu, 2024). Although there has not been a judicial dispute in practice, controversies surrounding copyright and the standards for evaluating human creativity in AI-generated works have emerged. Evidence from other countries suggests that Vietnam must address the issue of recognizing copyright for these works, as it is a crucial societal need that aims to both protect and nurture human creativity while promoting the advancement of science and technology (O'Callaghan, 2024). To develop objective arguments about the shortcomings in current Vietnamese law regarding the emerging issue of copyright protection for AI-generated works, the author has chosen to examine case studies from two nearby legal regions - China and Japan - which currently adopt different approaches to this issue (Beconcini, 2024). Both countries are competing in the field of AI technology; with the rapid advancement of AI,

[1]Faculty of Private Law, University of Law, Vietnam National University Hanoi. chamntp@vnu.edu.vn. ORCID 0009-0003-5112-0889

China and Japan underscore the importance of copyright law in the AI context, recognizing it as a vital factor for cultural, artistic, and academic pursuits (Takeuchi, 2024).

The AI industry in China and Japan has experienced rapid development in recent years (Beconcini, 2024). AI technology has penetrated various fields, primarily culture and the arts. It is also being used in creative activities, and AI, in turn, is producing creations that are nearly equal to those made by humans (Li & Lin, 2021). For example, Xiaobing is a female chat robot developed by Microsoft China. She participates in various creative activities, including writing poetry, drawing, and composing music (Zhou et al., 2019). Recently, she has gained immense popularity, with her Weibo account boasting over 5.2 million followers (Wakebe et al., 2021). Dreamwriter is China's first newspaper article generation robot, created by Tencent Technology. It automatically generates over 300,00 newspaper articles daily on finance, science, technology, and sports (Rallabhandi, 2023). In Japan, since 2016, artificial intelligence has ventured into the realm of literary creation, a domain once thought to be exclusive to humans. The novel titled "The Day a Computer Writes a Novel," produced by the artificial intelligence software program developed by the Hakodate University engineering team, was so impressive that the judges could not recognize it as a piece of literature created by AI and advanced past the preliminary round of the 13th Nikkei Hoshi Shinichi Literyary Prize (Phuong, 2016).

From the perspective of developing, deploying, and implementing AI, China and Japan require support for GenAI. However, as GenAI becomes increasingly integrated into our lives, we encounter numerous challenges related to intellectual property rights. A significant academic debate centers on copyright protection for works created by AI (Caldwell, 2023).

The Research Questions

Can AI-generated content be considered copyrighted works?

If they can be recognized as copyrighted works, to whom should the rights belong: the developer as the author or the end user as the author?

Can they be protected under other laws if they are not recognized as copyrightable works?

However, how they confront and decide whether to recognize copyright for works created by AI is completely different. China is the pioneer and the only country currently recognizing copyright for AI-generated works through the judicial process (the court interprets and applies the law) (Beconcini, 2024). Meanwhile, Japan adopts a more cautious approach concerning the classification of AI-generated works and the criteria for establishing human creative contribution in these works (Takeuchi, 2024). A careful analysis of the current copyright regulations in these jurisdictions, along with how scholars and courts interpret them in relation to AI-generated works, offers valuable insights for Vietnamese legislation and other countries that have yet to respond.

Methodology

The current study uses a qualitative approach to analyze copyrights related to AI-generated works through the lens of positive law and practical dispute resolution, including case law and landmark case studies. Initially, the paper relies on primary sources—specifically, the codified legal provisions from three jurisdictions: China, Japan, and Vietnam—to examine the current legal landscape in the AI era within the field of copyright. This analysis aims to identify challenges in recognizing copyright protection for works created by AI. Subsequently, the study utilizes secondary sources, including scholarly writings, academic articles, and official information published in reputable newspapers and journals, to discuss legal realities and examine practical dispute resolution through specific cases. These materials provide a basis for commentary and assessment of the compatibility of existing legal frameworks. A comparative legal method is also employed to analyze the differences between the Chinese and Japanese jurisdictions regarding their tendencies to recognize authorship rights for AI-generated works. Finally, the inductive method is used to develop recommendations for Vietnam.

Result

Copyright Protection for AI-Generated Works in China

Regulations for protecting AI-generated works

The Copyright Law of the People's Republic of China (CCL) provides the legal framework for granting copyright protection to creative works in the country (Rallabhandi, 2023).

According to CCL, similar to other countries, a work must be original, expressed in a tangible form, and illustrate the result of human creative activity to be protected under copyright law (Rallabhandi, 2023). The CCL states that the copyright owner is the author, which can be a natural person, legal person, or organization whose name is registered with the copyrighted work. In addition to CCL, the Ordinance on Implementation of the Copyright Law of the People's Republic of China (CCO) plays a vital role in interpreting the application of CCL provisions. Article (Art) 2 CCO states that in the Copyright Law, *a work refers to an original* result of intellectual activity in literature, art, and science that can be reproduced in a tangible expression. Art 3 CCO affirms that *creation refers to philosophical activity* directly producing literary, artistic, or scientific work. In other words, the work enjoying the protection of the Copyright Law must be the result of intellectual creation, reflecting the author's judgment and choice.

Furthermore, the amended CCL in 2020 maintained its stance that computer software can be copyrighted and does not extend copyright protection to "computer-generated work" (Art. 3(8)) (Wang, 2023).

The attitude of Chinese courts toward this issue has undergone significant changes

The judicial approach to copyright authorship of AI-generated works has evolved from being similar to the international approach to a distinct method since 2019. Before 2019, China did not recognize copyright for AI-generated works. Initially, the Chinese courts adhered to the global approach by delivering a negative response (Dai & Banggui, 2023). In April 2028, the Beijing High People's Court issued "The guideline for the Trial of Copyright Infringement Cases," which affirmed that "creation by natural persons" is an element of identifying works under copyright law. Following the release of this guideline, the Beijing Internet Court's decision in Beijing Film Law Firm v. Baidu Network Technology Co., Ltd aligned with the guideline. The court confirmed that only works created by a "natural person" who demonstrates ingenuity or creativity can be protected under CCL. The judicial approach to copyright authorship of AI-generated works has evolved from being similar to the international approach to a distinct method since 2019. Before 2019, China did not recognize copyright for AI-generated works. Initially, the Chinese courts adhered to the international approach by delivering a negative response (Dai & Banggui, 2023). In April 2028, the Beijing High People's Court issued "The guideline for the Trial of Copyright Infringement Cases," which affirmed that "creation by natural persons" is an element of identifying works under copyright law. Following the release of this guideline, the Beijing Internet Court's decision in Beijing Film Law Firm v. Baidu Network Technology Co., Ltd aligned with the guideline. The court confirmed that only works created by a "natural person" who demonstrates ingenuity or creativity can be protected under CCL. The case declined to protect AI-generated works under CCL.

Since the Tencent case, the Nanshan District Court in Shenzhen ruled on December 24, 2019, affirming the copyright of AI-generated works for deployers. Following the Tencent case, the "Spring Breeze Brings Kindness" case continued to recognize copyrightability for AI-generated work. The Beijing Internet Court made a judgment on November 27, 2023, and the Changshu People's Court (in China's Jiangsu province) affirmed the copyright of AI-generated work for the user. AI-generated works are now eligible for copyright protection in China, marking the first country to establish this standard. How Chinese courts interpret the law and recognize copyright for content created by GenAI presents a markedly different perspective from that of other countries.

The first case involves a copyright infringement dispute between Shenzhen Tencent Computer System Co., Ltd. (X) and Shanghai Yingxin Technology Co., Ltd. (Y) (Case No. 2019 粤 0305 民初 14010). On August 20, 2018, X utilized "Dreamwriter" to collect economic news and produced a financial article. This article was automatically written by "Dreamwriter" regarding stock market conditions. On the same day, X discovered that Y had posted the article on Y's website without permission and subsequently filed a lawsuit under the Copyright Law and the Unfair Competition Prevention Law, seeking to halt the infringement, eliminate its effects, and obtain compensation for damages. The case presents two legal issues: (1) whether the article is a copyrighted work, and (2) to whom the rights belong. Regarding the first point, Nanshan District in Shenzhen issued a ruling on December 24, 2019,

confirming that the AI-generated article was sufficiently original and met the elements for protection under copyright law. As for the second point, the court ruled that Tencent—a legal entity—should be attributed ownership. The following presents the Court's argument concerning several questions about the elements of a work that must be protected under the CCL. Does this article recognize a work regulated under copyright law? This article discusses stock market finance and falls within the literary field of expression, qualifying it as a work that may be reproduced (Art 2 and Art 4(1) CCO). Is this article a literary work protected by copyright? This depends on whether the article is original (Art 2 CCO). The article's originality must be analyzed and assessed by considering if it is an original creation, if its external expression differs from existing works, and if it demonstrates minimal originality (Lee, 2023). The court ruled that "The disputed article in this case was created by the plaintiff's creative team using software called Dreamwriter." Its expression meets the formal requirements for a copyrightable work.

Second case, "Spring breeze brings kindness" [(2023) Jing 0491 Min Chu No 11279], dated November 27, 2023. The plaintiff utilized the Stable Diffusion Model to create an image of a woman dressed in a Han Dynasty costume with braided hair. He shared the "Spring Breeze Brings Kindness" image on his social media. After the plaintiff had posted the image, the defendant, without permission, published an article on a blog and attached this image. The plaintiff subsequently sued the defendant for infringing on his copyrights and rights to share information online and display his name. This case raises two legal questions: Does the image generated by generative AI qualify as a work under copyright law? Is the plaintiff (the user) entitled to copyright ownership of the work?

The court determined that X had creatively selected models, prompts, and parameters to generate an image that reflected personal expression. It concluded that the image below constitutes an original work of intellectual property, qualifying as art. Consequently, the court ordered Y to issue an apology and pay 500 RMB in compensation for economic losses. The ruling stated that when an AI-generated image reflects an individual's original selection of models, prompts, and parameters, it should be recognized as a work protected under copyright law.

The judgment noted that the images created by the plaintiff using Stable Diffusion software demonstrate the plaintiff's creative choices and personal expression through specific tasks: 1. Model Selection: X selected a model suitable for his creation from tens of thousands available online. This choice reflects the plaintiff's aesthetic sensibility and creative intent, shaping the artistic style and category of the work. 2. Inputting Prompts: X provided prompts for image generation, outlining the subject matter, environment, composition, style, and more. This process specified the desired qualities of the image and conveyed the plaintiff's creative vision. 3. Setting Parameters: X set parameters for image generation (such as image resolution and aspect ratio), affecting the quality and features of the final image. 4. Adjusting the Generation Process: X refined the image by adding prompts and changing parameters based on initial results, ultimately selecting an image that X found satisfactory (Rallabhandi, 2023). As a result, the image reflects the plaintiff's creative input prompt and thus qualifies as a "product of intellectual creativity."

Third case, Changshu People's Court (in Jiangsu Province, China) on March 7, 2025. The case involved an image of a heart-shaped balloon created by Lin (only known by his surname) using an AI tool called Midjourney. Lin posted the image on social media and subsequently sued two companies for copyright infringement after they used the design in their social media posts without his permission (Wininger, 2025).

The court found that Lin "demonstrated his selection and arrangement" in the process of revising the prompt text and refining the image's details using editing software, and determined that the originality of the work is copyrightable. The ruling ordered the defendant companies to issue a public apology and pay Lin 10,000 RMB (approximately US$1,380) in damages (Wininger, 2025).

In summary, judicial practice in China shows that extending copyright protection to non-human creations, such as automated news, has significant implications in China (Kuai et al., 2022). Additionally, the Chinese judiciary has affirmed that the author of AI-generated work is the end user who initiates the work's existence, as seen in the "Spring breeze brings kindness" case and the "heart-shaped balloon" case.

Copyright Protection for AI-Generated Works in Japan

Regulations on copyright protection for AI-generated works

Since 2017, Japan has extensively focused on technological innovation in AI, using it in product and content development from an early stage. In this context, the “New Information Asset Evaluation Committee” of the Cabinet Intellectual Property Strategy Headquarters published the “Report of the New Information Asset Evaluation Committee” in March 2017. The New Information Asset Report examines the current state of the intellectual property system for products created with AI utilizing deep learning technology.

The first view is that the copyrightability of works generated by AI is determined by satisfying three requirements outlined in Art 2 of Japanese Copyright Law (JCL): creative intention, behavior regarded as an innovative contribution, and an external form that is objectively assessed as a creative expression of ideas and emotions (Takeuchi, 2023).

JCL states that only creative expressions of "thoughts or emotions" qualify as works. Things generated purely by animals or computers do not qualify as works because they do not meet the requirements for thoughts and emotions (Echi, 2020) (Dai & Banggui, 2023). According to Japanese scholars, Japan holds the view that only human creations can be protected by copyright as “works” (Echi, 2020).

Furthermore, originality is necessary to recognize copyrightability; originality in a work means that “the work is the author's creation and has not been copied from any other work” (Echi, 2020).

By 2019, when AI was widely used in business innovations, as well as in producing creative outputs in academics, art, and beyond, the Cabinet Intellectual Property Strategy Headquarters announced the “Intellectual Property Promotion Plan 2019” in June 2019. This plan highlighted the future implications of AI-generated works, emphasizing the need to establish rules and guidelines. The Copyright Committee proposed that AI-generated works be divided into two categories (Echi, 2020): The first category consists of creations where the user of the trained model contributes creatively to the development of the AI content, using the trained model as a “Tool” (Okamoto & Yoshikawa, 2024) (Toshiyuki, 2024). The second category includes products from users of the trained model whose contributions are limited to simple, non-creative instructions (Okamoto & Yoshikawa, 2024) (Toshiyuki, 2024).

Additionally, there is a lack of creative expression, leading to the view that it does not qualify as a work of authorship. Reasons for this include the idea that creativity is an expression of personality and that computers do not have personality (Takashi, 2018), along with the notion that even if computers might be seen as having personality, they lack the human ability of “expression” (Ueno, 2019). There is a concern that the originality of work generated by AI is also questioned, which may result in it not being considered a copyrightable work (Echi, 2020).

Conversely, they invest time and effort into creating content with AI and crafting prompts that bring it to life. In that case, it can be seen as a demonstration of creative intent and contribution, thereby deserving copyright recognition (Fukuoka, 2023).

In summary, this situation reflects traditional creative works: a work is considered copyrighted if it meets three requirements under JCL, and the creative contributor is recognized as the author who uses AI as a tool (Toshiyuki, 2024). However, it has been argued that more attention should be paid to the specific level of creative contribution needed to establish copyrightability (Warren & Grasser, 2024).

In reality, it is not easy to distinguish whether a work was created automatically by GenAI or by a person using GenAI as a tool (Echi, 2020) (Okamoto & Yoshikawa, 2024). In 2019, it was clear that there was no single explanation for handling AI-generated works under copyright law in Japan. Therefore, when a specific case arises, the parties involved must decide how to proceed through a separate agreement, referring to the “Guidelines for Contracts on the Use of AI and Data” and other relevant documents. Since 2020, with the rapid development of AI model technology, the Copyright Commission has stated that trying to establish a unified view on copyright and other rights—rather than leaving it to individual parties to decide—will be a helpful way to manage AI-generated content in the future. This approach is needed to protect intellectual property rights and help promote research and development in the AI industry (Echi, 2020).

Under what standard can it be said that humans “created” something or had “created contributions” to AI-generated works?

In 2023, a committee within Japan's Agency for Cultural Affairs began drafting a document to clarify the relationship between Japan's copyright law and AI. Nearly 25,000 public comments were submitted to the drafting committee, and the final 45-page document was published (Okamoto & Yoshikawa, 2024).

Regarding the copyrightability of AI-generated content, content produced autonomously by AI is not considered "creatively produced expressions of thoughts or sentiments" and is therefore not classified as (copyrighted) "works." Conversely, if a person uses AI as a "tool" to express thoughts or sentiments creatively, such material qualifies as a "work," and the user of the AI is regarded as the "author."

Deciding if someone has used AI as a "tool" depends on two factors: whether they had a "creative intention" and whether they made a "creative contribution."

The copyrightability of an AI-generated work is assessed on a case-by-case basis (*Japan Copyright Office (JCO), 2024)*. For example, the following factors are considered to determine whether an AI product qualifies as a copyrightable work (*Japan Copyright Office (JCO)*, 2024).

Factor one relates to instructions, input quantity, or content (such as prompts). Detailed instructions that promote creative expression in producing an AI output are likely to improve the chances of being recognized for creative contributions (*Japan Copyright Office (JCO),* 2024).

Factor two relates to the number of attempts made during the generation process. It is essential to recognize that multiple attempts do not impact the evaluation of creative contributions. However, repeated efforts—such as reviewing the generated materials and refining the instructions or inputs—may be considered a creative contribution (*Japan Copyright Office (JCO),* 2024). A trial combined with factor one—where the trial is repeated while evaluating the product and adjusting the instructions or inputs—can be viewed as a copyrightable work (Warren & Grasser, 2024). Factor three involves choosing one option from various content choices. This simple act of selection does not influence the evaluation of creative contributions. Nevertheless, even actions typically regarded as creative may involve a selective aspect; therefore, it is also essential to consider their relationship with such actions (Warren & Grasser, 2024).

Additional human improvements to an AI-generated work may be considered creative expression and could be considered copyrightable works; however, this will not impact the copyright status of other parts of the work (2024).

The guidance above recommends that deciding if an AI-generated work is a user-created creative contribution should be assessed on a case-by-case basis. It should rely on a comprehensive evaluation based on qualitative rather than quantitative evidence (*Japan Copyright Office (JCO)*, 2024).

Discussion

Regulations respond negatively to the protection of AI-generated works in Vietnam

According to the 2005 Vietnamese Intellectual Property Law (VIPL), amended in 2009, 2019, and 2023, the author is defined as "*the person who directly creates the work"* (Art 12a.1; Art 13.1). It also states that "the person who supports, gives opinions, or provides materials for her to create the work is not the author or co-author" (Art 12a.2).

According to Vietnam's traditional approach, intellectual property, including copyright, is considered *intangible property that arises from human creative labor without duplicating another person's work* (Art 14.3). Copyright protects literary, artistic, and scientific works (Art 14.1).

Therefore, VIPL currently recognizes only humans as authors. If a GenAI user provides input, comments, or documents to support the creation of a work, they are not considered the author or co-author (Le Thi, 2023) (T. Nguyen Thanh & Le Vinh Phuoc, 2024).

Additionally, from the perspective of VIPL's fundamental philosophy, it reinforces the prevailing stance against granting copyright for works created by AI in Vietnam. The primary focus of analysis is the current state of AI creativity and its interaction with existing laws and the doctrinal foundations of copyright (O'Callaghan, 2024). The justification for copyright protection in Vietnam is based on Natural Rights Theories. This includes Labor Theory (Biron, 2014) and Personality Theory (Biron, 2014), which relate to humans. Like countries with continental law, Vietnam has historically been influenced by personality theory. Traditionally, originality is defined as the imprint of the author's personality on the

work. Without an author who initially expressed an idea, no copyrightable work exists. The expression requirement reflects originality and also requires creativity (Matt, 2023).

Case study

The case began on August 10, 2024. After submitting her exam for the color subject, graphic design major N.K.L. (class GD1807) received a score of 0 from lecturer M.D. The lecturer explained the reason was: “Because of using AI, there is no ability to edit according to the lecturer’s instructions.” The student felt unfairly treated, so her older sister quickly went online to rally colleagues and public opinion to “deal with” the school. The school regraded the exam and awarded 5 points (N. Nguyen Thanh, 2024).

This case raised the following issue: The teacher believed that using AI was against regulations, so she assigned the student 0 points. The student felt they were unfairly treated. Conflicts arose when the re-graded scores varied significantly, ranging from 0 points to 5 points (N. Nguyen Thanh, 2024).

Although this case study is not directly related to copyright disputes, it also suggests many associated social and legal issues. Can AI be utilized to generate content for creative endeavors such as literature, art, and academia? It’s unclear who owns AI-generated content, who is liable for it, and what content exists in the public domain (Hlr, 2024). If Gen AI’s involvement in all activities, including artistic, literary, and scientific creation, is undeniable, is AI-generated content recognized as work?

Are works protected and recognized under VIPL? Finally, how should the degree of human creative contribution be assessed to establish copyrightability under the VIPL? The debate over whether output produced by AI systems can be protected has become a question that Vietnamese courts and legislators must confront, as other jurisdictions have done (O’Callaghan, 2024).

Exploring Solutions to the Issues: Justifications for Vietnamese Copyright Regulations on AI-Generated Works from a Comparative Perspective

In addition to defining responsibilities for legal entities (enterprises) that develop and deploy AI, it is also reasonable to acknowledge their rights when they are directly using AI models to create materials, as in the case of Tencent, which contributes to promoting the development of science and technology (Beconcini, 2024). However, justifying copyright protection for AI-autonomously generated output without human authorization in Vietnam is challenging (Le Thi, 2023). China’s interpretation of recognizing the copyrightability of AI-generated works is unlikely to have a significant impact on countries with traditional copyright systems or authors' rights, like Vietnam, which is typically influenced by natural law (Dai & Banggui, 2023).

Although it may be difficult to justify granting copyright protection to works created by such systems based on personality traits reflected in labor, modern copyright law in Japan does not completely deny it. Instead, it recognizes that there are cases where AI is simply a tool. Humans continue to make creative contributions, so it is reasonable to acknowledge copyright for works created by AI.

So, what lessons can we take from comparing China and Japan?

In the case of Tencent in China, work is generated automatically by AI without any human creative input, such as adding reminders, adjusting parameters, or editing output (Jung, 2020). Some Chinese scholars believe AI cannot “create” art without human interaction and intervention. However, some argue that entering data into an AI system counts as creative input by a human author (Dsouza, n.d.). As a result, this debate about the relationship creates a barrier to understanding and raises questions about whether AI-generated works should be protected (Caldwell, 2023).

The Chinese court’s decision that AI-generated objects are considered works is based on strong utilitarian principles, which focus on promoting innovation through copyright law (Kuai et al., 2022). Therefore, if protecting AI-generated objects can boost industry growth, the court is likely to recognize these objects as works (Dai & Banggui, 2023).

However, assuming that the Tencase case follows Japanese guidelines and current academic views, it is difficult to automatically assign authorship for articles generated by AI. The reasons for this difference are:

First, in Japan, human participation is understood through a comprehensive evaluation of various actions. In contrast, China has adopted a broader interpretation (Kuai et al., 2022).

Secondly, in Japan, there is a distinction between automatically generated AI material and AI-assisted material (using GenAI as a tool). However, in China, there is no distinction between automatically generated and AI-assisted material (Lee, 2023).

Thirdly, there is a distinction in adopting a standard of originality, which pertains to the relationship between the author and the work.

The academic community presents two main perspectives regarding the originality of AI-generated content. One viewpoint argues that assessments should rely on subjective standards (Lee, 2023). Proponents of this view assert that humans create content by following predetermined rules. AI lacks independent thought and creativity, meaning it cannot generate content from raw data in the same way. Consequently, the produced content may be identical or similar and often lacks distinctive features typically considered unoriginal (Lee, 2023); (Wakebe et al., 2021). Conversely, the alternative perspective advocates for the use of objective criteria to evaluate originality. If it includes any novel elements, it is deemed original by analyzing the final product and comparing it to prior works—regardless of the creator's identity or methods (Li, 2018).

China shifted from a subjective to an objective standard. The originality requirement can be met even without "human participation." (Kuai et al., 2022). Conversely, like nearly all countries, Japan maintains the subjective standard stance and argues that although AI software users can influence the style of the results, they cannot determine the final content (Dai & Banggui, 2023). As a result, no link can be established between the software users and the AI-generated outcome, leading to the conclusion that the result is not protectable (Abbott & Rothman, 2023).

To What Extent Should Humans Interact with AI-Generated Works for Them to Be Considered Human Creations in Vietnam

It is essential to emphasize that, according to Vietnam's natural rights theory, asserting a level similar to that of China presents challenges (Dai & Banggui, 2023). Japan offers a reasonable compromise between Vietnam and China. However, given Japan's current approach to judging cases, Vietnam faces a significant hurdle when the court makes decisions without a specific standard for creative contribution. Therefore, it can be challenging to determine the boundaries of rulings when a human creator utilizes AI as a tool throughout their work, leading to ambiguity about where the AI contribution ends and the human contribution begins (Schindler & Haines, 2024). Moreover, under the current provision that "the person who supports, gives opinions, or provides materials for her to create the work is not the author or co-author" (Art 12a.2), it is challenging for Vietnam to interpret VIPL of regulations regarding copyrightability for AI-generated work, unlike Japan which has a provision for protecting copyright for computer-generated work (as a tool).

For Vietnam, it remains essential to return to the fundamentals. VIPL is designed to adapt to new technologies, and its scope can be broadened. The question today is how this will unfold with AI (Hlr, 2024). However, Vietnam's regulations are currently constrained by the provision stating that "the person who supports, gives opinions, or provides materials for her to create the work is not the author or co-author," which complicates the application of current regulations in the context of AI generating works of art, literature, science, and more. Vietnam has reaffirmed its commitment to advancing AI, a vital component of the fourth industrial revolution. Therefore, Vietnam must address this challenge. The country should implement more initiatives regarding this issue in the coming years, starting with the recognition of the necessity to develop a comprehensive comparative law research plan. This includes not only formulating guidelines from an authoritative body but also considering amendments to the regulations related to copyright.

Conclusion

The paper's findings indicate that the question should no longer be whether to recognize copyright for works created by GenAI, but rather what the standard for assessing human creative participation in such works should be. The art world has acknowledged that AI-generated images are indeed art (Caldwell, 2023). AI-generated works deserve copyright protection to foster innovation and investment (Wang, 2023). Without exaggeration, the advancement of technology is significantly influenced by the prospects and potential effects of AI-generated copyright. Protecting AI-copyrighted works will encourage individuals and organizations to research, implement, and utilize GenAI. (Abbott & Rothman, 2023).

The prevailing belief in Vietnam that all works created by GenAI lack human creative input is no longer valid, given the evolving landscape of AI technology. As a latecomer, Vietnam can learn from the experiences of other countries. Studying China and Japan provides valuable insights for Vietnam. Nonetheless, it is clear that to adapt to the country's development context, Vietnam not only needs to establish clear guidelines like those in Japan but must also revisit its copyright regulations to ensure that amendments align with the criteria of explainability in the context of AI-generated works, framing them as creations made by humans using AI as a tool. This is important because if the legal regulations on copyright in countries like China and Japan interpret works created by AI as eligible for copyright protection, the scope of protected works created by GenAI will be determined either broadly or narrowly, depending on legal interpretation. Meanwhile, the current copyright regulations in Vietnam make it challenging to apply them to works created by GenAI.

In other words, the research results indicate that Vietnam must establish a legal framework for copyright, enabling it to determine whether works created by GenAI can qualify for copyright protection, provided they meet the criteria of originality, involve the contribution of human intellectual labor, and are presented in a form that reflects expression in the fields of culture, art, and science. Regarding the criteria for evaluating the involvement of human intellectual labor in works created by GenAI, these need to be addressed on a case-by-case basis according to the guidelines issued by competent authorities.

Abbreviation

GenAI: Generative Artificial Intelligence; CCL: The Copyright Law of the People's Republic of China; Art: Article; CCO: Ordinance on Implementation of the Copyright Law of the People's Republic of China; JCL: Japanese Copyright Law; VIPL: Vietnamese Intellectual Property Law.

References

[1]. Abbott, R., & Rothman, E. (2023). Disrupting Creativity: Copyright Law in the Age of Generative Artificial Intelligence. Florida Law Review, 75, 1142–1197.

[2]. Beconcini, P. (2024). AI-Generated Works in China: The "Japanese Girl" and Comparison to US Precedent. IP Litigator, 16–22.

[3]. Biron, L. (2014). Creative Work and Communicative Norms: Perspectives from Legal Philosophy. In THE WORK OF AUTHORSHIP (Mireille van Eechoud, pp. 19–44). https://doi.org/10.1515/9789048523009-002 .

[4]. Caldwell, M. (2023). What Is an "Author"? – Copyright Authorship of AI Art Through a Philosophical Lens. House Law Review, 61, 412–439.

[5]. Copyright Committee. (2020). A Consideration on the Protection of AI-Produced Products under Copyright Law. Intellectual Property Management, 70(8), 1130–1144.

[6]. Dai, Z., & Banggui, J. (2023). The Copyright Protection of AI-generated Works under Chinese Law. Judicial Tribune, 13(2), 241–260. https://doi.org/10.24818/TBJ/2023/13/2.05

[7]. Dsouza, M. (n.d.). Artificial Intelligence, Entertainment, and Intellectual Property: Navigating the New Frontiers. Berkeley Journal of Entertainment and Sports Law, 1, 2-6.

[8]. Echi, Y. (2020). AI Creations, Machine Learning and Copyright Law. Patent, 73(8), 131–146. https://jpaa-patent.info/patent/viewPdf/3558

[9]. Fukuoka, S. (2023, April 28). Legal Issues – The Copyrightability of Generated AI Work. Nishimura & Asahi. https://www.nishimura.com/sites/default/files/newsletters/file/robotics_ai_230428_jpn.pdf

[10]. Hlr. (2024, February 12). Voluntary Commitments from Leading Artificial Intelligence Companies on July 21, 2023. Harvard Law Review. https://harvardlawreview.org/print/vol-137/voluntary-commitments-from-leading-artificial-intelligence-companies-on-july-21-2023/

[11]. Japan Copyright Office (JCO), Copyright Division, Agency for Cultural Affairs, Japan. (2024). General Understanding on AI and Copyright in Japan . https://www.bunka.go.jp/english/policy/copyright/pdf/94055801_01.pdf

[12]. Jung, G. (2020). Do Androids Dream of Copyright? Examining AI Copyright Ownership. Berkeley Tech, 35, 1152-1155.

[13]. Suzuki, K. (鈴木健太). (2024). 「生成 AI と著作権の現在地—これまでの経緯・現在と論点の整—」[Generative AI and Copyright: A Summary of the Past. Present and Issues]. 立法と調査[Legislation and Research], 469, 31–47.

[14]. Kuai, J., Ferrer Conill, R., & Karsoonal, M. (2022). AI>= Journalism: How the Chinese Copyright Law Protects Tech Giants' AI Innovations and Disrupts the Journalistic Institution. Digital Journalism, 10(10), 1893–1912. https://doi.org/10.1080/21670811.2022.2120032

[15]. Le, T, M. (2023). Copyright Protection for Works Created by AI Technology under EU Law and Vietnamese Law. Review of European and Comparative Law, 55(4), 7–28. https://doi.org/10.31743/recl.16258.

[16]. Lee, Y. (2023). A consideration on copyrightability and ownership of AI-generated works in China: From the Tencent Dreamwriter case. Intellectual Property Journal, 115–127. https://www.publication.law.nihon-u.ac.jp/pdf/property/property_16/each/12.pdf

[17]. Li, X., & Lin, B. (2021). The Development and Design of Artificial Intelligence in Cultural and Creative Products. Mathematical Problems in Engineering, 2021, 1–10. https://doi.org/10.1155/2021/9942277

[18]. Li, Xiaoyu. (李晓宇). (2018). 人工智能生成物的可版権性与権利分配議 [Discussion on the distribution of copyright rights for artificial intelligence products]. 電子知的財産 [Electronic Intellectual Property], 6.

[19]. Matt, B. (2023). Impossibility of Emergent Works' Protection in U.S. and EU Copyright Law. North Carolina Journal of Law & Technology, 25, 2–40.

[20]. Kato, M. (加戸守行). (2013). 著作権法逐条講義 六訂新版 [Copyright Law Article-by-Article Lecture 6th Revised Edition]. 著作権情報センター ほか[Copyright Information Center].

[21]. Nguyen, T, N. (2024). Khủng hoảng vì "con thỏ 5 chân" [Crisis over the 5-legged rabbit]. VNExpress. https://vnexpress.net/khung-hoang-vi-con-tho-5-chan-4788850.html

[22]. Nguyen, T, T., Le,V, P, T. (2024). Copyright in works generated by artificial intelligence: European Union practice and lessons for Vietnam. Conference: Legal Studies and Development Forum, Hanoi. https://www.researchgate.net/publication/380535441_QUYEN_TAC_GIA_DOI_VOI_TAC_PHAM_TAO_RA_BOI_TRI_TUE_NHAN_TAO_TAO_SINH_THUC_TIEN_CUA_LIEN_MINH_CHAU_AU_VA_KINH_NGHIEM_CHO_VIET_NAM

[23]. O'Callaghan, C. (2024). Can Output Produced Autonomously by AI Systems Enjoy Copyright Protection, and Should It? An Analysis of the Current Legal Position and the Search for the Way Forward. Cornell International Law Journal, 55. https://publications.lawschool.cornell.edu/cilj/2024/01/31/can-output-produced-autonomously-by-ai-systems-enjoy-copyright-protection-and-should-it-an-analysis-of-the-current-legal-position-and-the-search-for-the-way-forward/

[24]. Okamoto, Y., & Yoshikawa, J. (2024, April 18). Is Japan still a machine learning paradise? World Intellectual Property Review. https://www.worldipreview.com/future-of-ip/is-japan-still-a-machine-learning-paradise

[25]. Pham, H. T., Nong, D., Simshauser, P., Nguyen, G. H., & Duong, K. T. (2024). Artificial intelligence (AI) development in Vietnam's energy and economic systems: A critical review. Journal of Cleaner Production, 438, 140692. https://doi.org/10.1016/j.jclepro.2024.140692

[26]. Phuong, H. (2016, June 23). A Japanese robot writes a novel for the national contest. VNExpress. https://vnexpress.net/nha-van-robot-nhat-sang-tac-truyen-du-thi-toan-quoc-3376359.html

[27]. Rallabhandi, K. (2023). The Copyright Authorship Conundrum for Works Generated by Artificial Intelligence: A Proposal for Standardized International Guidelines in the WIPO Copyright Treaty. George Washington International Law Review, 54, 312-343.

[28]. Schindler, S., & Haines, A. (2024). AI Art and Copyright. Business Law International, 25(2), 102.

[29]. Takashi, Y. (2018). Copyright in the AI Era. NBL, 1131, 1–12. https://www.itlaw.jp/NBL1131.pdf

[30]. Takeuchi, S. (2023). Revisiting legal policies regarding copyright protection for AI-created works: Comparative study of national laws regarding policies such as the UK legal approach. Patent, 76(1), 101–116.

[31]. Takeuchi, S. (2024). Japan's Legal Framework for Copyright Protection of AI-Generated Works: A Comparative Law Analysis Exploring the Possibility of Japan's Adoption of the UK Legislative Approach. The Journal of World Intellectual Property, 1–21. https://doi.org/10.1111/jwip.12333.

[32]. Than, N., & Liu, L. (2024). Artificial Intelligence Ambitions and Regulatory Pathways: Vietnam's Strategy in the Regional and Global AI Landscape. Communication Research and Practice, 10(3), 351–361. https://doi.org/10.1080/22041451.2024.2346419.

[33]. Toshiyuki, F. (深井俊至. (2024). Copyrightability and Patentability of AI-Generated Output. Patent News, 16122, 22–27. https://journals.sas.ac.uk/amicus/article/view/5663/5327

[34]. Ueno, T. (2019). Copyright Law Issues Surrounding Artificial Intelligence and Machine Learning: Recent Trends in Japan and Europe. Legal Times, 91(8), 34.

[35].Wakebe 分部 悠, Gong Jie 共 捷,Zhou Ting 周婷. (2021). AI 関連技術及び AI 生成物の知財 保護に関する中国での - 最新トピック- [Latest Topics on Intellectual Property Protection of AI-Related Technologies and AI Products in China]. パテント[Patent] 74 (9): 29-33.

[36].Wang, F. F. (2023). Copyright protection for AI-generated works: Solution to further challenges from generative AI. Amicus Curiae, 5(1), 88–125.

[37].Warren, S., & Grasser, J. (2024, March 12). Japan's New Draft Guidelines on AI and Copyright: Is It Really OK to Train AI Using Pirated Materials? Privacy World. https://www.privacyworld.blog/2024/03/japans-new-draft-guidelines-on-ai-and-copyright-is-it-really-ok-to-train-ai-using-pirated-materials/

[38].Wininger, A. (2025, March 14). Chinese Court Again Rules AI-Generated Images Are Eligible for Copyright Protection. China IP Law Update. https://www.chinaiplawupdate.com/2025/03/chinese-court-again-rules-there-is-copyright-in-ai-generated-images/

[39].WIPO. (n.d.). Intellectual Property Talks. World Intellectual Property Publishers.

[40].Zhou, Li., Gao, J., Li, D., & Shum, H.-Y. (2019). The Design and Implementation of XiaoIce, an Empathetic Social Chatbot. Computational Linguistics, 46(1), 53–93. https://doi.org/10.1162/COLI_a_00368.